

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



March 18, 2005

Senator Liz Figueroa
Chair, Joint Committee on Boards,
Commissions, and Consumer Protection
1020 N Street, Room 521
Sacramento, CA 95814

RE: Definition of Primary Health Care

Dear Senator Figueroa:

This is in response to a March 17, 2005 Email from the staff of the Joint Committee. Over the last six weeks, the Board has been in continuous dialog, working in good faith, through meetings, phone calls and Emails with Committee staff regarding five issues identified in the Joint Committee's January 10, 2005 'preliminary staff recommendations' document as Issue #2, Issue #3, Issue #4, Issue #5 and Issue #8.

There is agreement with Issue #3 relating to the use of sterile single-use disposable needles; Issue #4 relating to use of assistants; Issue #5 relating to other boards with the jurisdiction to perform acupuncture; and Issue #8 relating to the continuing education regulations.

As to Issue #2, the Board is in agreement with the Committee's staff recommendations that the Board codify the definition of primary health care in emergency regulations. In compliance, the Board has submitted five different versions of draft language for the Committee's staff consideration, which have been rejected. In response to drafts submitted, Committee staff has verbally acknowledged that a practitioner can diagnose, treat and refer. However, when the Board has suggested these terms be incorporated into the regulatory definition of primary health care, there has been resistance. The Committee staff has requested the definition be limited to define that "primary care provider means only that a patient may see an acupuncturist without first having to obtain a referral from any physician or other health care professional." The staff response to these drafts indicates an intent to limit the existing ability of an acupuncturist acting within the scope of his or her license who provides a patient the first level of health care, including diagnostic and treatment services and referrals to other health care practitioners.

Committee staff has indicated, that in lieu of the Board adopting a more limiting definition there is a possibility of the Joint Committee amending existing intent language defined in Business and Professions Code section 4926, notably, removing the reference to primary health care. There is

concern that limiting the definition too narrowly could adversely affect the licensee's participation status under the California Workers' Compensation system, which restricts participants to those classified as primary health care professionals. If licensees weren't recognized under the Workers' Compensation system, the consumer would be directly impacted by an inability for access to these types of acupuncture services through this and other insurance systems.

The Board has acted and negotiated in good faith, attempting to address concerns of the Joint Committee staff through successive drafts. The Board is prepared to continue these discussions in good faith, however, the most recent Email from Committee staff, dated March 17, 2005 indicated staff "do not think it is useful to run drafts by us anymore" and that "we will draw our conclusions based upon what the Board does." It appears the Joint Committee staff is insisting on a definition of primary health care that the Board feels may well be limiting the longstanding and established ability of an acupuncturist to function as a primary health care professional within the Workers' Compensation and other insurance systems.

The Board respectfully requests the opportunity for a face-to-face meeting with the Joint Committee's consultants and the Board's executive officer and legal counsel to continue an open dialog of why the board has preferred the language contained in the successive drafts. Disagreement does not equate with lack of cooperation. The Board wants to work cooperatively with the Joint Committee to reach consensus on this issue.

Sincerely,

Shari Asplund, Chair

Marilyn Nielsen, Executive Officer

Cc: Department of Consumer Affairs